

## Summary of the Data Breach Examples

The ASX has published new data breach examples in an update to Guidance Note 8 Continuous Disclosure: Listing Rules 3.1–3.1B, effective from 27 May 2024 ("Data Breach Examples").

At a high level, the Data Breach Examples provide that if an ASX listed entity becomes aware of a data breach of *encrypted* sensitive customer information and receives hacker blackmail, the ASX would not consider that disclosable to the market at that time because:

- The entity cannot determine if it is market sensitive (particularly because the information is encrypted); and
- Even if it is market sensitive, exceptions under Rule 3.1A apply (e.g., the matter is indefinite and is confidential).

Even if the entity subsequently becomes aware that some *unencrypted* sensitive information has been accessed, thereby triggering notification requirements under the *Privacy Act 1988* (Cth) ("Privacy Act"), that may not be materially price sensitive if the extent of the breach remains "uncertain" (i.e., how much data was taken, total impact and if there was in fact a breach). In the example provided, it is only when it is "confirmed" that the breach relates to a "large" number of *unencrypted* sensitive customer data that a breach is "likely" market sensitive.

A summary of the scenarios detailed in the Data Breach Examples is set out in the following table.

Stage	Scenario	ASX Guidance
1.	The listed entity discovers that <i>encrypted</i> sensitive customer data may have been accessed. The listed entity finds that some information may have been accessed and calls in a forensic expert to investigate	<b>Disclosure likely not required</b> The listed entity isn't able to determine if it is market sensitive (especially as the data is encrypted), and 3.1A exceptions apply (i.e., does not comprise matters of supposition or is insufficiently definite to warrant disclosure)
2.	The listed entity receives blackmail from the hackers	<b>Disclosure likely not required</b> It is still unclear whether the breach is materially price sensitive (the data is still likely encrypted), and 3.1A exceptions still apply. The ASX expects the listed entity to continue to investigate on an urgent basis
3.	The listed entity engages with relevant regulators confidentially	<b>Disclosure not required</b> Engaging with regulators or the ASX on a confidential basis does not cause confidentiality to be lost
4.	The forensic expert confirms that some <i>unencrypted</i> sensitive personal information has been accessed, requiring	<b>Disclosure not required yet</b> It is still unclear whether the breach was materially price sensitive; even if it was, the

	a notification to the OAIC and affected individuals	3.1A exceptions still apply prior to the notification
5.	The listed entity notifies affected individuals of the access to <i>unencrypted</i> sensitive personal information	<b>It would be prudent for the listed entity to first release a market announcement to ensure it complies with its Listing Rules obligations prior to notifying the individuals</b>
6.	Confirmation received that <i>unencrypted</i> sensitive information about a <i>large number of customers</i> exfiltrated. A journalist also approaches the listed entity	<b>Disclosure required</b> This is new information, and it is market sensitive, even if the listed entity is still investigating. The journalist's approach also likely means confidentiality has been lost.
7.	The hacker threatens to publish the information if the listed entity does not pay a ransom and has a history of following through with threats. The listed entity decides to pay the ransom	<b>Disclosure not required</b> The listed entity has already informed the market of all materially price sensitive information of which it is aware
8.	The hacker releases the sensitive information onto the dark web	<b>Disclosure required</b> A reasonable person would expect this information to have a material effect on the price or value of the listed entity's securities
9.	The listed entity becomes aware of commentary that a class action is being considered, with invitations for expressions of interest by shareholders	<b>Disclosure not required</b> This is not price sensitive, although being served is price sensitive